ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CACR06-1470

JUNE 27, 2007

ALONZO WILLIAMS APPELLANT	APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. CR-05-773-4]
V.	HON. LYNN WILLIAMS, JUDGE
STATE OF ARKANSAS APPELLEE	AFFIRMED AS MODIFIED

Appellant Alonzo Williams was found guilty by the trial judge of DWI, fourth offense, and sentenced to twelve years' imprisonment, a fine of $1000, court costs, a four-year suspension of his driver's license, and completion of an alcohol-safety program in prison. Williams appealed. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), Williams's counsel has filed a motion to be relieved as counsel and a brief stating there is no merit to the appeal, indicating that the only possible issue on appeal is the legality of Williams's sentence, but claiming that reversal is not warranted. Williams has submitted a pro se list of points in which he raises two points for reversal: the sentence imposed by the trial court is illegal on its face and the evidence was insufficient to convict him. The State agrees with Williams's first

argument and asks this court to modify his sentence. We affirm Williams's conviction but modify his sentence.

The maximum sentence for DWI, fourth offense, is six years if the fourth offense is within five years of the first DWI offense. Ark. Code Ann. § 5-65-111(b)(3)(A) (Repl. 2006). At trial, the State admitted into evidence without objection Williams's three prior convictions for DWI that occurred within five years of the first DWI offense. During the sentencing phase of the trial, the State presented evidence of nine prior convictions, unrelated to the previous DWI convictions. Pursuant to the habitual-offender statute, the sentence of a defendant who has "previously been convicted of four (4) or more felonies" may be enhanced to a maximum sentence of "not more than two (2) times the maximum sentence for the unclassified felony offense[.]" Ark. Code Ann. § 5-4-501(b)(1)(A) & (2)(F) (Repl. 2006). In this case, two times the maximum sentence for DWI, fourth offense, is twelve years.

At the conclusion of the sentencing phase of the trial, after both parties had made closing arguments, the trial court referred to Williams as a "career offender" and orally reviewed Williams's criminal history. The court then stated that it was sentencing Williams to "the maximum sentence possible" and sentenced him to twelve years in the Arkansas Department of Correction. However, while the judgment and commitment order reflected a sentence of twelve years' imprisonment, it did not state that Williams's sentence had been enhanced pursuant to the habitual-offender statute and stated instead that the habitual-offender statute was "N/A."

Williams's first pro se point on appeal is that his sentence is illegal because the judgment and commitment order indicates that Williams was not sentenced under the

habitual-offender statute and, therefore, the maximum sentence authorized is six years for DWI, fourth offense, under Ark. Code Ann. § 5-65-111(b)(3)(A) (Repl. 2006). The State agrees that the twelve-year sentence is illegal, although not for the reason argued by Williams. The State cites the Arkansas Supreme Court's decision in *Lawson v. State*, 295 Ark. 37, 746 S.W.2d 544 (1988), for its holding that, when a DWI conviction has already been enhanced on the basis of the subsequent-offense aspect of the DWI statute, the sentence may not be enhanced under the habitual-offender statute, even for felony convictions unrelated to the DWI offenses. We agree with the State that the trial court could not use the habitual-offender statute in conjunction with the DWI sentencing-enhancement provision. *Lawson*, 295 Ark. at 41, 746 S.W.2d at 545; s*ee also Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). Accordingly, we modify appellant's sentence from twelve years to six years, the maximum allowed for DWI, fourth offense, under Ark. Code Ann. § 5-65-111(b)(3)(A) (Repl. 2006).

Williams's second pro se point on appeal is that the State failed to prove beyond a reasonable doubt that he was actually driving the car. While Williams admits that he was intoxicated in the car, he and his wife both testified at trial that Williams's wife was driving the car. We treat this argument as one challenging the sufficiency of the evidence to support his conviction. In order to challenge the sufficiency of the evidence to support the judgment on appeal, Williams was required to make a motion for dismissal at the close of all of the evidence. Ark. R. Crim. P. 33.1(b) & (c) (2007). Because Williams made no such motion, his argument is not preserved for appellate review. *Id.*; *see also Raymond v. State*, 354 Ark. 157, 161, 118 S.W.3d 567, 569-70 (2003).

In accord with this opinion, we affirm Williams's conviction and modify his sentence from twelve years to six years. In addition, we grant counsel's motion to withdraw as Williams's attorney.

Affirmed as modified.

VAUGHT and BAKER, JJ., agree.